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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
10

11 CORY SPENCER, an individual; DIANA  
MILENA REED, an individual; and  
12 COASTAL PROTECTION RANGERS,  
INC., a California non-profit public  
13 benefit corporation,

14 Plaintiff,

15 vs.

16 LUNADA BAY BOYS; THE  
INDIVIDUAL MEMBERS OF THE  
17 LUNADA BAY BOYS, including but not  
limited to SANG LEE, BRANT  
18 BLAKEMAN, ALAN JOHNSTON AKA  
JALIAN JOHNSTON, MICHAEL RAE  
19 PAPAYANS, ANGELO FERRARA,  
FRANK FERRARA, CHARLIE  
20 FERRARA and NICOLAS FERRARA;  
CITY OF PALOS VERDES ESTATES;  
21 CHIEF OF POLICE JEFF KEPLEY, in  
his representative capacity; and DOES 1-  
22 10,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 2:16-cv-2129

Judge: Hon. S. James Otero  
Dept: Courtroom 10C

Magistrate Judge:  
Hon. Rozella A. Oliver

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF FRANK FERRARA'S MOTION  
FOR SUMMARY JUDGMENT OR,  
IN THE ALTERNATIVE,  
PARTIAL SUMMARY  
JUDGMENT**

*[Filed concurrently with Notice of  
Motion; Request for Judicial Notice of  
Adjudicative Facts; Declaration of  
Tiffany Bacon; Notices of Lodging;  
proposed Statement of Uncontroverted  
Facts and Conclusions of Law and  
[Proposed] Judgment lodged  
herewith]*

Date: August 21, 2017  
Time: 10:00 a.m.  
Dept: Courtroom 10C

Complaint Filed: March 29, 2016  
Trial Date: November 7, 2017

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Defendant FRANK FERRARA (“Defendant” or “Frank Ferrara”) hereby submits his Memorandum of Points and Authorities in support of his Motion for Summary Judgment on all of Plaintiffs’, CORY SPENCER (“Plaintiff Spencer”), DIANA MILENA REED (“Plaintiff Reed”) and COASTAL PROTECTION RANGERS, INC. (“Plaintiff CPR”) (collectively, “Plaintiffs”), causes of action asserted against him in this action, including: (1) Bane Act; (2) Public Nuisance; (3) Assault; (4) Battery; and (5) Negligence<sup>1</sup> or, alternatively, partial summary judgment on Plaintiffs’ causes of action for Bane Act, Public Nuisance, Assault and Battery Only.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **1. INTRODUCTION**

This lawsuit stems from allegations of various intentional and negligent bad acts by a purported “surf gang” referred to by Plaintiffs as the “Lunada Bay Boys.” Plaintiffs’, CORY SPENCER (“Plaintiff Spencer”), DIANA MILENA REED (“Plaintiff Reed”) and COASTAL PROTECTION RANGERS, INC. (“Plaintiff CPR”) (collectively, “Plaintiffs”) assert that the defendants in this action, including defendant and moving party FRANK FERRARA (“Defendant” or “Frank Ferrara”), qualify as members of this so-called “gang,” and that Frank Ferrara himself has violated the Bane Act, caused a public nuisance and committed acts of assault, battery and negligence. The evidence reveals a complete dearth of any facts demonstrating that Frank Ferrara engaged in even one single act or omission capable of supporting any of Plaintiffs’ claims. As a result, there is no genuine dispute of material fact that Plaintiffs’ claims against Frank Ferrara are groundless. As a result,

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<sup>1</sup> On or about July 22, 2016, the Court declined to exercise supplemental jurisdiction over Plaintiffs’ Fifth Cause of Action for Violation of California Coastal Act.



1 judgment must be entered in favor of Frank Ferrara on Plaintiffs' Complaint as a  
2 matter of law.<sup>2</sup>

3 Plaintiffs can proffer no admissible evidence that Frank Ferrara was involved  
4 in any action and/or inaction undertaken by the purported "surf gang," or any other  
5 act or omission capable of supporting judgment in favor of any Plaintiff. After this  
6 Court's resounding rejection of Plaintiffs' purported Class claims, Plaintiffs much  
7 each prove all of their claims against Frank Ferrara to prevail. However, Plaintiffs  
8 simply have no factual basis to proceed with any claim against Frank Ferrara.  
9 Indeed, Plaintiffs' position appears to be that, by virtue solely of the fact Frank  
10 Ferrara admits to surfing at and around Lunada Bay for 40 years, he is therefore  
11 definitively liable for damages caused by the wrongful acts of others at Lunada Bay.  
12 Being a surfer at Lunada Bay does not equate to liability, or even knowledge of the  
13 tortious behavior that serves as the basis of Plaintiffs' claims against the Defendants  
14 in this action. Given the lack of any admissible evidence connecting Frank Ferrara to  
15 Plaintiffs' claimed harm, there is no genuine dispute of material fact that Frank  
16 Ferrara is entitled to Judgment in his favor as a matter of law on all of Plaintiffs'  
17 claims.

18 For all of the reasons set forth herein and the evidence submitted in support of  
19 this Motion, the uncontroverted facts demonstrate that all of Plaintiffs' claims against  
20 Frank Ferrara lack merit, and Frank Ferrara is entitled to judgment in his favor as a  
21 matter of law.

22 ///

23 ///

24 ///

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25  
26 <sup>2</sup> If the Court is not inclined to grant summary judgment on all of Plaintiffs' causes of action  
27 against Frank Ferrara; the moving party alternatively requests partial summary judgment on  
28 Plaintiffs' claims for Bane Act, Public Nuisance, Assault and Battery only.

1 **2. STATEMENT OF FACTS**

2 **2.1 Factual Background**

3 Plaintiffs assert causes of action against Frank Ferrara including the following:  
4 (1) Bane Act; (2) Public Nuisance; (3) Assault; (4) Battery; and (5) Negligence.  
5 None of these claims are supported by the evidence in this case. Frank Ferrara has  
6 never met or come into contact with Plaintiff Spencer or Plaintiff Reed. (Statement  
7 of Uncontroverted Facts and Conclusions of Law (“SUF”) ¶ 3.) Plaintiffs cannot  
8 demonstrate a genuine dispute as to any material fact relating to Frank Ferrara  
9 because this case is devoid of any evidence that Frank Ferrara participated in any  
10 activity capable of supporting Plaintiffs’ claims.

11 **2.1.1 Background Facts Relating to the Ferrara Defendants**

12 There are four members of the Ferrara family being sued in this action. Frank  
13 Ferrara, the moving party, is the father of Defendant Charlie Ferrara. (SUF ¶ 1.)  
14 Frank Ferrara is also the brother of Defendant Angelo Ferrara and the uncle to  
15 Defendant N.F. (SUF ¶ 2.) Defendant Angelo Ferrara is also the father to non-party  
16 Leo Ferrara. (SUF ¶ 2.)

17 **2.1.2 Facts Specific to Plaintiff Spencer**

18 Plaintiff Spencer was deposed on October 11, 2016. Prior to January of 2016,  
19 Plaintiff Spencer never surfed at Lunada Bay. (SUF ¶ 4) Plaintiff Spencer has never  
20 had any interactions with Frank Ferrara, and he did not testify about any actions  
21 attributable to Frank Ferrara. (SUF ¶ 5-6.) When asked about Defendant Angelo  
22 Ferrara (Frank Ferrara’s brother), Plaintiff Spencer admitted he had no specific  
23 knowledge of Frank Ferrara’s actions relative to the allegations in this case,  
24 testifying under oath “...I can’t identify to you a . . . Ferrara from the next Ferrara . .  
25 . .” (SUF ¶ 5.) Plaintiff Spencer thus admits his knowledge of supposed actions by  
26 the Ferrara family members is based on gossip, nothing but speculation and  
27 conjecture. Put simply, Plaintiff Spencer can proffer no evidence capable of  
28 supporting his claims against Frank Ferrara and, despite making inflammatory

1 allegations of violent and harassing acts against him, Spencer could not even identify  
2 Frank Ferrara if he saw him. (SUF ¶ 5.)

3 ***2.1.3 Facts Specific to Plaintiff Reed***

4 Plaintiff Reed was deposed on October 24, 2016. Just as Plaintiff Spencer,  
5 Plaintiff Reed never surfed at Lunada Bay prior to January 2016. (SUF ¶ 7.)  
6 Plaintiff Reed's testimony is devoid of any mention of even a single interaction  
7 between Plaintiff Reed and Frank Ferrara. (SUF ¶ 8.) There is no evidence that  
8 Frank Ferrara was actively or passively involved in any bad acts nebulously asserted  
9 against the Defendants in this case. In sum, Frank Ferrara has demonstrated a  
10 complete lack of factual support for any of Plaintiff Reed's Claims against him.

11 ***2.1.4 Facts Specific to Plaintiff CPR***

12 Plaintiff CPR makes no specific allegations against Frank Ferrara nor has  
13 discovery revealed any facts to support any of CPR's claims against Frank Ferrara.  
14 Plaintiff CPR does not have standing to assert the majority of the claims being made  
15 against Frank Ferrara in this action. Moreover, the President of Plaintiff CPR  
16 submitted a declaration in support of Plaintiffs' denied Motion for Class  
17 Certification; however, the declaration did not assert any harm suffered by declarant,  
18 Mark Slatten, or any harm suffered by the entity, CPR. (RJN, Ex. J.) More  
19 specifically, the declarant made no mention of Frank Ferrara as a person responsible  
20 for its alleged damages due to the fact that Plaintiff CPR can proffer no evidence  
21 capable of demonstrating that Frank Ferrara was ever involved in any wrongful  
22 actions at Lunada Bay.

23 ***2.1.5 Discovery Demonstrates an Utter Dearth of Evidence***  
24 ***Supporting Plaintiffs' Claims Against Frank Ferrara***

25 Plaintiffs' supplemental disclosures identify only two witnesses as having  
26 information pertaining to their claims against members of the Ferrara family, but the  
27 disclosures are vague to the point of meaninglessness, and fail even to identify to  
28 which member of the Ferrara family the disclosures refer. (RJN, Ex. E at 10:7-10:20)

1 and 19:16-19:21.) As mentioned above, apart from Frank Ferrara, there are other  
2 members of the Ferrara family by Plaintiffs are named as defendants in this action.  
3 Ken Claypool and Jim Russi were identified as having information relating to “one  
4 or more of the Ferraras.” However, in discovery, neither of these witnesses ended up  
5 testifying to any facts supporting Plaintiffs’ claims against Frank Ferrara in this  
6 action.

7 Ken Claypool was deposed on June 13, 2017. The only Frank Ferrara that  
8 Ken Claypool has met is Frank Ferrara Senior, the father of Frank Ferrara and  
9 Defendant Angelo Ferrara. (SUF ¶ 9.) This is, of course, not the same Frank Ferrara  
10 that is being sued and bringing the instant motion. As referenced herein, Frank  
11 Ferrara is the brother of Defendant Angelo Ferrara; however, Ken Claypool confirms  
12 he has never met any siblings of Angelo Ferrara’s. (SUF ¶ 9.) Mr. Claypool was  
13 asked if he considered Frank Ferrara to be one of the “Lunada Bay Boys,” and the  
14 following dialogue was exchanged:

15 Q: “Would you classify Frank Ferrara as one of the Lunada Bay  
16 Boys?”

16 A: “Not the father or Angelo’s dad.”

17 Q: “Do you know of any other Frank Ferrara?”

17 A: “That’s the only Frank Ferrara that I know of.”

18 (SUF ¶ 10.)

19 As evidenced by Mr. Claypool’s testimony, he has no knowledge of any facts  
20 supportive of Plaintiffs’ claims against Frank Ferrara.

21 Plaintiffs also identified Jim Russi in their supplemental disclosures as a  
22 witness with information relating to “one or more of the Ferraras.” However, Jim  
23 Russi has no knowledge of Frank Ferrara engaging in any wrongful conduct at or  
24 near Lunada Bay nor Frank Ferrara being involved in any illegal activity at or near  
25 Lunada Bay. (SUF ¶ 11.) Thus, Mr. Russi’s testimony too is devoid of admissible  
26 evidence supporting Plaintiffs’ claims against Frank Ferrara.

27 Further still, Plaintiffs can proffer no admissible evidence demonstrating a  
28 causal connection between any act or omission of Frank Ferrara and their claimed



1 damages in this case. Plaintiff Spencer and Plaintiff Reed were served with  
2 Interrogatories, Requests for Admission and Requests for Production of Documents  
3 on behalf of Frank Ferrara. Despite Frank Ferrara's requests that Plaintiffs identify  
4 all facts, witnesses and documents in support of Plaintiffs' claims against Frank  
5 Ferrara, no admissible evidence of the same was produced. (SUF ¶ 12.) Instead,  
6 Plaintiffs reiterate the allegations set forth in their Complaint, which are not proven  
7 by the evidence in this matter as it relates to Frank Ferrara and are otherwise  
8 irrelevant to Frank Ferrara. Plaintiffs reference a December 1991 article in Surfer  
9 Magazine titled "People Who Surf" and a March 1992 letter in Surfer Magazine as  
10 their only support for claims against Frank Ferrara. However, on their faces, these  
11 25 year old documents provide no factual support for Plaintiffs' claims for violations  
12 of the Bane Act, Public Nuisance, Assault, Battery or Negligence within the  
13 statutorily allowable time period and are, therefore, unsupportive of Plaintiffs'  
14 individual claims. (RJN, Ex. I, pg. 3.) While Frank Ferrara freely admits to surfing  
15 at Lunada Bay, this is not evidence of any fact establishing an element of any of  
16 Plaintiffs' claims against Frank Ferrara.

17 Lastly, while Plaintiffs speculate (without any factual support) that  
18 communications between Defendant Sang Lee and Frank Ferrara may be supportive  
19 of their claims against Frank Ferrara, the production of the entirety of Sang Lee's  
20 phone records demonstrates no communications supportive of Plaintiffs' claims  
21 actually exist. Further, Defendant Sang Lee testified that Frank Ferrara has never  
22 had any communications with him about how to behave at Lunada Bay, or any  
23 communications about preventing persons from visiting Lunada Bay, or any  
24 communications about preventing persons from surfing at Lunada Bay. (SUF ¶ 13.)  
25 Frank Ferrara testified that the only phone communications he has had with  
26 Defendant Sang Lee was about being served with process in this action and about  
27 purchasing a car from Defendant Sang Lee's mother. (SUF ¶ 13.) Defendant Sang  
28

1 Lee has never witnessed Frank Ferrara attempting to prevent persons from visiting or  
2 surfing Lunada Bay. (SUF ¶ 14.)

3 **2.2 Procedural Background**

4 On March 29, 2016, Plaintiffs filed a Class Action Complaint against the  
5 following defendants: Lunada Bay Boys; the Individual Members of the Lunada Bay  
6 Boys, including but not limited to Sang Lee, Brant Blakeman, Alan Johnston aka  
7 Jalian Johnston, Michael Rae Papayans, Angelo Ferrara, Frank Ferrara, Charlie  
8 Ferrara and N.F.; City of Palos Verdes Estates; Chief of Police Jeff Kepley, in his  
9 representative capacity; and DOES 1-10. (RJN, Ex. A.) Plaintiffs asserted causes of  
10 action against Frank Ferrara including the following: (1) Bane Act; (2) Public  
11 Nuisance; (3) Violation of California Coastal Act; (4) Assault; (5) Battery; and (6)  
12 Negligence. Frank Ferrara filed his Answer to Plaintiffs' Complaint on September 2,  
13 2016. (RJN, Ex. B.)

14 Prior to Frank Ferrara's appearance in this matter, on June 3, 2016,  
15 Defendants, City of Palos Verdes Estates and Chief of Police Jeff Kepley, filed a  
16 motion to dismiss Plaintiffs' Complaint. On July 11, 2017, the Court dismissed  
17 Plaintiffs' third cause of action for violation of the California Coastal Act. (RJN, Ex.  
18 C, pgs. 10-13.) On August 29, 2016, the Court held a Scheduling Conference,  
19 wherein the parties stipulated that the Court's order of July 11, 2017 shall apply to all  
20 defendants. (RJN, Ex. D, pg. 1.)

21 Plaintiffs filed their Motion for Class Action Certification on December 29,  
22 2016. The Court denied Plaintiffs' Motion on February 21, 2017. (RJN, Ex. F.)  
23 While Plaintiffs filed a Petition for Permission to Appeal this Court's order denying  
24 Plaintiffs' Motion for Class Action Certification, the United States Court of Appeals  
25 for the Ninth Circuit denied Plaintiffs' petition on May 18, 2017. (RJN, Ex. G.)  
26 Based on the foregoing, the only claims remaining to be adjudicated against Frank  
27 Ferrara in this action are those specifically impacting the individual Plaintiffs. Thus,

28

1 the claims alleged against Frank Ferrara and subject of this motion are: (1) Bane Act;  
2 (2) Public Nuisance; (3) Assault; (4) Battery; and (5) Negligence.

3 Pursuant to Local Rule 7-3, this Motion is made following the conference of  
4 counsel which took place on July 12, 2017. (Declaration of Tiffany Bacon, ¶ 3.)

5 Frank Ferrara now herein submits his Motion for Summary Judgment on the  
6 aforementioned claims, and he is entitled to summary judgment in his favor.

7 **3. LEGAL ARGUMENT**

8 **3.1 This Court Has Authority to Grant Frank Ferrara's Motion for**  
9 **Summary Judgment**

10 The right to move for summary judgment is established by *Federal Rules of*  
11 *Civil Procedure*, Rule 56. "A party may move for summary judgment, identifying  
12 each claim or defense – or the part of each claim or defense – on which summary  
13 judgment is sought. The court shall grant summary judgment if the movant shows  
14 that there is no genuine dispute as to any material fact and the movant is entitled to  
15 judgment as a matter of law." (Fed. R. Civ. P. 56(a).)

16 "Summary judgment is a marvelous instrument in expediting the  
17 administration of justice. It is the means by which causes or defenses  
18 with no real merit are weeded out without the hazard of a decision on an  
19 artificial situation described by artful pleadings, or without the cost in  
precious judicial time of a long protracted trial which ends with a  
determination that, on the facts viewed most favorably to the party, the  
claim or defense is not good as a matter of law." (Bros v. Grace Mfg.  
Co., 261 F.2d 428, 432 (5th Cir. 1958).)

20 "Where a defendant thinks that he is entitled to a judgment either on pleadings or on  
21 basis of extrinsic facts established by affidavits, depositions, or stipulations, he may  
22 at any time move with or without supporting affidavits for a summary judgment in  
23 his favor under the Rules." (Gifford v. Travelers Protective Ass'n, 153 F.2d 209,  
24 211 (9th Cir. 1946).) "The moving party need not disprove plaintiff's claim; it need  
25 only establish that the factual allegations have no legal significance." (Dayton  
26 Hudson Corp. v. Macerich Real Estate Co., 812 F.2d 1319, 1323 (10th Cir. 1987).)

27 Furthermore, "a party opposing a properly supported motion for summary  
28 judgment may not rest upon mere allegation or denials of his pleading, but must set

1 forth specific facts showing that there is a genuine issue for trial . . . [T]he plaintiff  
2 must present affirmative evidence in order to defeat” a motion for summary  
3 judgment. (Anderson v. Liberty Lobby, Inc., 477 U.S. 242 256-57 (1986).)

4 Frank Ferrara’s motion is made under the aforementioned statutory authority  
5 and case law. As is demonstrated by this motion, all of Plaintiffs’ claims made  
6 against Frank Ferrara are without merit. Plaintiffs have no evidence whatsoever to  
7 support their causes of action for (1) Bane Act, (2) Public Nuisance, (3) Assault, (4)  
8 Battery, or (5) Negligence against Frank Ferrara. For this reason, Frank Ferrara is  
9 entitled to summary judgment in his favor on all of Plaintiffs’ claims asserted against  
10 him in this action.<sup>3</sup>

11 **3.2 Frank Ferrara Is Entitled to Judgment In His Favor On Plaintiffs’**  
12 **Claims for Bane Act, Public Nuisance, Assault and Battery Because**  
13 **Plaintiffs’ Can Proffer No Admissible Evidence To Support These**  
14 **Claims**

15 **3.2.1 Bane Act**

16 In order demonstrate Frank Ferrara is liable to Plaintiffs under the Bane Act,  
17 Plaintiffs must prove that (1) Frank Ferrara interfered with [or attempted to interfere  
18 with] Plaintiffs’ constitutional rights or statutory right by threatening or committing  
19 violent acts and that (2) Plaintiffs reasonably believed that if [they] exercised [their]  
20 [constitutional or statutory] rights Frank Ferrara would commit violence against  
21 [them] or [their] property. (CACI 3025; Cal. Civ. Code § 52.1.) “Section 52.1 *does*  
22 *require an attempted or completed act of interference* with a legal right,  
23 accompanied by a form of coercion.” (Jones v. Kmart Corp., 17 Cal.4th 329, 334  
24 (Cal. 1998) [emphasis added].) Further, “it is clear that to state a cause of action  
25 under section 52.1 there must first be violence or intimidation by threat of violence.”  
(Cabesuela v. Browning-Ferris Indus., 68 Cal.App.4th 101, 111 (1998).) The record

26 <sup>3</sup> If the Court is not inclined to grant summary judgment on all of Plaintiffs’ causes of action  
27 against Frank Ferrara; the moving party alternatively requests partial summary judgment on  
28 Plaintiffs’ claims for Bane Act, Public Nuisance, Assault and Battery only.



1 is devoid of any evidence demonstrating that Frank Ferrara committed any act of  
2 violence, intimidation or interference capable of supporting Plaintiffs' Bane Act  
3 claims.

4 The Bane Act claim also alleges conspiracy among the defendants. However,  
5 even assuming, *arguendo*, this Court determines a disputed issue of fact relating to  
6 Plaintiffs' conspiracy allegations, Civil Code section 52.1(j) provides,

7 "[s]peech alone is not sufficient to support an action brought pursuant to  
8 subdivision (a) or (b), except upon a showing that the speech itself  
9 threatens violence against a specific person or group of persons; and the  
10 person or group of persons against whom the threat is directed  
reasonably fears that, because of the speech, violence will be committed  
against them or their property and that the person threatening violence  
had the apparent ability to carry out the threat."

11 Further, "[u]nder California law, '[a] conspiracy is an agreement entered into  
12 between two or more person with the specific intent to agree to commit' a specified  
13 crime, 'with the further specific intent to commit that crime..., followed by an overt  
14 act committed in this state by one (or more) of the parties for the purposes of  
15 accomplishing the object of the agreement.'" (United States v. Fernandez, 388 F.3d  
16 1199, 1225 (9th Cir. 2004).) "Knowledge alone of tortious conduct is insufficient to  
17 prove a conspiracy agreement. Actual knowledge of the planned tort, without more,  
18 is insufficient to serve as the basis for a conspiracy claim. Knowledge of the planned  
19 tort must be combined with intent to aid in its commission." (Sebastian Int'l, Inc. v.  
20 Russolillo, 162 F.Supp.2d 1198, 1207 (C.D. Cal 2001).)

21 As is demonstrated by the indisputable evidence, Plaintiffs have never met or  
22 encountered Frank Ferrara in person. (SUF ¶¶ 3-14.) Plaintiffs have no admissible  
23 evidence demonstrating either has intimidated by Frank Ferrara, nor has Frank Ferrara  
24 ever attempted to interfere with or actually interfered with any of Plaintiffs'  
25 constitutional or statutory rights. Frank Ferrara has proven with admissible evidence  
26 the absence of any factual support for Plaintiffs' Bane Act claims. Thus, against  
27 them, the burden shifts to Plaintiffs to demonstrate that any communications  
28 exchanged or expressed by Frank Ferrara led them to reasonably fear that violence

1 would be committed against them, or that Frank Ferrara entered into an agreement  
2 with the co-defendants with the specific intent of committing a crime against any of  
3 the Plaintiffs followed by an overt act. (Civ. Code § 52.1(j).) Plaintiffs cannot carry  
4 this burden, and Frank Ferrara is therefore entitled to Judgment as a matter of law.  
5 While Plaintiffs will argue a disputed issue of fact *may* exist because they have yet to  
6 review certain, irrelevant text messages between the defendants, their argument is  
7 based on pure speculation. With no evidence to demonstrate that Frank Ferrara ever  
8 interfered with Plaintiffs' rights or threatened violence against Plaintiffs, Frank  
9 Ferrara is entitled to Judgment as a matter of law on Plaintiffs' cause of action for  
10 Bane Act, including the purported conspiracy allegations.

### 11 **3.2.2 Public Nuisance**

12 Plaintiffs assert a claim for Public Nuisance against Frank Ferrara pursuant to  
13 California Civil Code sections 3479 and 3480. Section 3479 provides the following:

14 "Anything which is injurious to health, including, but not limited to, the  
15 illegal sale of controlled substances, or is indecent or offensive to the  
16 senses, or an obstruction to the free use of property, so as to interfere  
17 with the comfortable enjoyment of life or property, or unlawfully  
obstructs the free passages or use, in the customary manner, of any  
navigable lake, or river, bay, stream, canal, or basin, or any public park,  
square, street, or highway, is a nuisance."

18 Further, Section 3480 states that "[a] public nuisance is one which affects at the same  
19 time an entire community or neighborhood, or any considerable number of person,  
20 although the extent of the annoyance or damage inflicted upon individuals may be  
21 unequal."

22 California Civil Code section 3493 provides that "[a] private person may  
23 maintain an action for a public nuisance, *if it specifically injurious to himself*, but  
24 not otherwise." "An essential element of a cause of action for nuisance is damage or  
25 injury. (Helix Land Co., Inc. v. City of San Diego, 82 Cal.App.3d 932 (1978).) Not  
26 only do Plaintiff Spencer and Plaintiff Reed lack any factual support for their claim  
27 for public nuisance against Frank Ferrara, but they also lack standing to bring this  
28

1 claim because they have not demonstrated damages suffered by them, if any, were  
2 caused by Frank Ferrara.

3 The same evidence detailed above demonstrates Frank Ferrara has not engaged  
4 in any behavior injurious or obstructive to Plaintiffs, any community or  
5 neighborhood. Plaintiffs have not and cannot present any evidence that any actions  
6 by Frank Ferrara interfered with Plaintiffs' comfortable enjoyment of life or  
7 property. There is no evidence in this case that Frank Ferrara ever attempted to  
8 prevent others' use and enjoyment of Lunada Bay, including Plaintiffs, who have had  
9 ample opportunity to provide such evidence but failed to do so. (*See* SUF ¶¶ 3-14.)

10 Plaintiffs can proffer no admissible evidence that Frank Ferrara took a single  
11 action in violation of California Civil Code sections 3479 and 3480, as is  
12 demonstrated by the indisputable evidence. The record is devoid of facts  
13 demonstrating that Frank Ferrara interfered with any person's or community's  
14 enjoyment of life, property or access to Lunada Bay or surrounding areas. . As such,  
15 Frank Ferrara is entitled to judgment in his favor on Plaintiffs' claim for public  
16 nuisance because Plaintiffs cannot demonstrate a genuine dispute as to any material  
17 fact relating to this claim.

### 18 **3.2.3 Assault**

19 “[A]n assault is a demonstration of an unlawful intent by one person to inflict  
20 immediate injury on the person of another then present.” (*Lowry v. Standard Oil*  
21 *Co.*, 63 Cal.App.2d 1, 6-7 (1944).) “Mere words however threatening or profane will  
22 not amount to assault.” (*Tomblinson v. Nobile*, 103 Cal.App.2d 266 (1951).)

23 The evidence in this case does not support that Frank Ferrara ever even came  
24 into contact with either Plaintiff, much less that he intended to or did inflict  
25 immediate injury to either one of the Plaintiffs. Plaintiffs have not testified to that  
26 fact and have not provided any evidence in support of this claim. Plaintiffs have  
27 never met Frank Ferrara and cannot identify any interaction either have had with  
28 Frank Ferrara that would amount to assault. (SUF ¶ 3-14.) Moreover, while there is

1 no evidence in this case of any communications between Frank Ferrara and any of  
2 the other co-defendants, or any other person, relating to the Plaintiffs, even  
3 assuming, *arguendo*, such communications existed, written or spoken words alone  
4 would not be supportive of Plaintiffs' assault claim because words do not form a  
5 factual basis for assault.

6 There is absolutely no evidence whatsoever that Frank Ferrara ever intended to  
7 inflict harm on Plaintiff Spencer and Plaintiff Reed. Plaintiffs' cause of action for  
8 assault indisputably lacks any factual basis, and should be summarily adjudicated in  
9 favor of Frank Ferrara.

#### 10 **3.2.4 Battery**

11 "A battery is any intentional, unlawful and harmful contact by one person with  
12 the person of another . . . A contact is 'unlawful' if it is unconsented to." (Ashcroft  
13 v. King, 228 Cal.App.3d 604, 611 (1991).) It is more than clear based on the  
14 evidence presented in support of this Motion that Frank Ferrara has never come into  
15 any contact with the Plaintiffs, most certainly not unlawful and harmful contact that  
16 was not consented to by Plaintiffs. (SUF ¶¶ 3-12, 14.) Without being able to  
17 identify any physical interaction either has had with Frank Ferrara, Plaintiffs can  
18 present absolutely no admissible evidence to support their claim for battery against  
19 Frank Ferrara. Plaintiffs' cause of action for battery is frivolous, without merit and  
20 should be summarily adjudicated in favor of Frank Ferrara.

#### 21 **3.3 Frank Ferrara is Entitled to Judgment in His Favor on Plaintiffs'** 22 **Negligence Claim**

23 "Although questions of negligence are usually reserved for the factfinder,  
24 summary judgment is proper where the facts are undisputed and only one conclusion  
25 may reasonably be drawn from them. Negligence then becomes a matter of law."  
26 (Flying Diamond Corp. v. Pennaluna & Co., 586 F.2d 707, 713 (9th Cir. 1978).)  
27 "The elements of a cause of action for negligence are well established. They are (a)  
28 a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as



1 the proximate or legal cause of the resulting injury.” (Ladd v. County of San Mateo,  
2 12 Cal. 4th 913, 917 (Cal. 1996); see also Shatford v. L.S. Cnty. Sheriff’s Dep’t, No.  
3 CV 15-1767 BRO (AJW), 2016 U.S. Dist. LEXIS 52473 (C.D. Cal Mar. 29, 2016).)

4 Assuming Frank Ferrara owed a duty of care to the Plaintiffs in this action,  
5 which is not supported by the evidence in this case as they appear to have never  
6 come into contact with each other, Plaintiffs’ lack evidence demonstrating that Frank  
7 Ferrara ever breached a duty of care owed to the Plaintiffs. Without being able to  
8 prove this element of their claim, Plaintiffs cannot maintain a cause of action for  
9 negligence against Frank Ferrara. Under oath, Plaintiff Spencer and Plaintiff Reed  
10 provided no testimony regarding any interaction with Frank Ferrara or any action or  
11 inaction undertaken by Frank Ferrara that would amount to Frank Ferrara’s liability  
12 in this case under a cause of action for negligence. Moreover, Plaintiffs have no  
13 evidence that they suffered any damage and/or injury as a result of any action or  
14 inaction undertaken by Frank Ferrara.

15 It is undisputed that Plaintiffs have no evidence to support their claim for  
16 negligence against Frank Ferrara. Plaintiffs have no evidence Frank Ferrara has ever  
17 engaged in any wrongful act that has caused them injury. (SUF ¶¶ 3-14.) The only  
18 reasonable conclusion to draw from the lack of Plaintiffs’ evidence is that Frank  
19 Ferrara is not liable for negligence against the Plaintiffs. Based thereon, judgment  
20 should be entered in favor of Frank Ferrara on Plaintiffs’ cause of action for  
21 negligence.

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1 **4. CONCLUSION**

2 Put simply, there is no evidence Frank Ferrara is liable to Plaintiffs under the  
3 causes of action being asserted in this case. Plaintiffs have no evidence that Frank  
4 Ferrara caused them any damages.

5 For the reasons set forth herein, Frank Ferrara is entitled to summary judgment  
6 in his favor.

7 Dated: July 24, 2017

BREMER WHYTE BROWN & O'MEARA  
LLP

By: 

Alison K. Hurley  
Tiffany L. Bacon  
Attorneys for Defendants  
FRANK FERRARA and CHARLIE  
FERRARA

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 20320 S.W. Birch Street, Second Floor, Newport Beach, California 92660.

On July 24, 2017, I served the within document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FRANK FERRARA'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

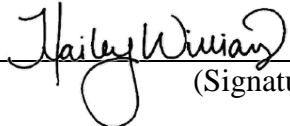
on the interested parties in this action as stated on the attached mailing list.

☒ (BY ELECTRONIC SERVICE) Complying with Code of Civil Procedure § 1010, I caused such document(s) to be Electronically Filed and Served through the \_for the above-entitled case. Upon completion of transmission of said document(s), a filing receipt is issued to the filing party acknowledging receipt, filing and service by 's system. A copy of the [Email receipt System] filing receipt page will be maintained with the original document(s) in our office.

Executed on July 24, 2017, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Hailey Williams  
(Type or print name)

  
(Signature)

**Cory Spencer v. Lunada Bay Boys et al.,**

**Case No. 2:16-cv-2129-SJO**

**BWB&O CLIENT: Frank and Charlie Ferrara**  
**BWB&O FILE NO.: 1178.176**

**SERVICE LIST**

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